

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JOANN MCCOY,

§

Plaintiff,

§

v.

§

Civil Action No. 3:03-CV-1346-N

COMMISSIONER OF THE SOCIAL  
SECURITY ADMINISTRATION,

§

Defendant.

§

**ORDER**

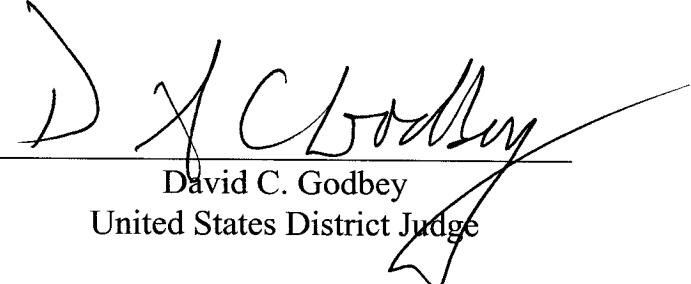
After making an independent review of the pleadings, files, and records in this case, and the Findings, Conclusions, and Recommendations of the United States Magistrate Judge, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and they are adopted as the findings and conclusions of the Court.

The Court will briefly address two of McCoy's objections relating to Dr. Mount's report. First, McCoy argues that because the Appeals Council's letter of denial did not expressly recite that it had considered Dr. Mount's report, this Court should infer that it did not consider that report. The Court is unwilling to make the inference that the Appeals Council did not consider a part of the record properly before it simply due to the lack of a routine recital. This is strengthened by the fact Pam Biancett, with the Appeals Council, expressly corresponded with McCoy's counsel regarding the report. Accordingly, McCoy's objection that the Appeals Council did not consider Dr. Mount's report is overruled.

Second, McCoy argues objects that the Magistrate Judge's Findings dealing with Dr. Mount's report conflict with the Fifth Circuit's recent decision in *Higginbotham v. Barnhart*, No. 04-10197 (5th Cir. Mar. 31, 2005). *Higginbotham* simply requires the district court to consider in its review any supplemental materials properly before the Appeals Council, even though not before the ALJ. The Magistrate Judge, and this Court, have considered Dr. Mount's report, and thus complied with the requirements of *Higginbotham*. *Higginbotham* does not purport to alter the requirements of 20 C.F.R. § 404.970(b) that "the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision," which was central to the Magistrate Judge's review of the Appeals Council's consideration of Dr. Mount's report. Accordingly, this objection and the balance of McCoy's objections are overruled.

It is, therefore, ordered that the findings, conclusions, and recommendations of the United States Magistrate Judge are adopted.

Signed May 12, 2005.



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David C. Godbey  
United States District Judge